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DEPARTMENT OF THE INTERIOR

5 CFR Part 3501

[Docket ID: DOI-2016-0007]

[167D0102R2; DS636440000; DR2000000.CH7000]

RIN 1092-AA12

Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior

AGENCY: Department of the Interior (DOI).

ACTION: Direct final rule.

SUMMARY: The Department of the Interior (DOI), with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Department of the Interior (Supplemental Standards). The Supplemental Standards apply only to DOI personnel and augment the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). This direct final rule amends portions of the Supplemental Standards to account for the current DOI structure resulting from organizational changes that established new bureaus and an office within DOI.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] unless we receive any significant adverse comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, DOI will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments on this rule by either of the methods listed below. Please use Regulation Identifier Number 1092-AA12 in your message.

1. Federal eRulemaking Portal: <http://www.regulations.gov>. In the “Search” bar, enter DOI-2016-0007 (the docket number for this rule) and then click “Search.” Follow the instructions on the website for submitting comments.
2. U.S. mail, courier, or hand delivery: Departmental Ethics Office, Department of the Interior, 1849 C Street NW, MS 7346, Washington, DC 20240.

We request that you send comments only by one of the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Edward McDonnell, Departmental Ethics Office, edward.mcdonnell@sol.doi.gov, (202) 208-5916.

SUPPLEMENTARY INFORMATION

I. Background

On August 7, 1992, OGE published the OGE Standards, which, as corrected and amended, are codified at 5 CFR part 2635 (57 FR 35006). Effective on February 3, 1993, the OGE Standards establish uniform standards of ethical conduct that apply to all executive branch officers and employees. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt and jointly issue agency-specific supplemental regulations that are necessary to properly implement its ethics program. On October 16, 1997, DOI, with OGE’s concurrence and joint issuance, established the Supplemental Standards that became effective on June 24, 1998. See 62 FR 53713-53726; 63 FR 34258-34259. Employees of DOI are subject to the Supplemental Standards promulgated by OGE and DOI. The Supplemental Standards are

necessary for successful implementation of DOI's ethics program in light of DOI's unique programs and operations. DOI is therefore amending portions of the Supplemental Standards to account for current DOI structure resulting from organizational changes that established new bureaus and an office within DOI.

II. Analysis of the Regulation

A. Section 3501.102 Designation of Separate Agency Components

The direct final rule amends § 3501.102(a) of the Supplemental Standards to reflect the current organizational structure mandated by Secretarial Order 3299 issued on May 19, 2010, and as further amended, in accordance with statutory authority that resulted in the establishment of new bureaus and an office within DOI. As currently organized and relevant to the Supplemental Standards, the duties and responsibilities of the former Minerals Management Service (MMS) were separated and reassigned to two newly established bureaus and an office. The new bureaus and office are the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR). BOEM and BSEE are distinct and separate bureaus under the Assistant Secretary for Land and Minerals Management. Section 2635.203(a) of the OGE Standards authorizes an executive department, by supplemental regulation, to designate as a separate agency any component of the department that the department determines exercises a distinct and separate function. Pursuant to this authority, DOI amends the Supplemental Standards to designate BOEM and BSEE as separate agencies in § 3501.102(a) for purposes of the regulations contained in subpart B of 5 CFR part 2635, government gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); 5 CFR 2635.807 governing teaching, speaking and writing; and § 3501.105(b) of this part governing

prior approval requirements for outside employment by an employee with a prohibited source (other than for an employee of the U.S. Geological Survey or for a special Government employee). ONRR is organizationally placed within DOI under the Assistant Secretary for Policy, Management and Budget. Therefore, ONRR is included in the remainder of DOI under § 3501.102(b).

B. Section 3501.103 Prohibited Interests in Federal Lands

The direct final rule amends § 3501.103(b)(1)(i) of the Supplemental Standards to include all BOEM, BSEE and ONRR employees in the restrictions against holding financial interests in Federal lands or resources administered or controlled by DOI. Following the establishment of MMS in 1982, to address ethics concerns, DOI promulgated a regulation extending the restrictions on ownership of interests in Federal lands to all employees of the MMS. See 62 FR 53714 (October 16, 1997). Therefore, in order to continue to protect the integrity of the programs of the former MMS, that were subsequently reassigned to the newly established entities of BOEM, BSEE and ONRR, DOI is revising § 3501.103(b) to explicitly cover all employees of these three entities.

PROCEDURAL MATTERS:

Regulatory Planning and Review (Executive Order (E.O.) 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends.

The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This direct final rule is not a “significant regulatory action” under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, this direct final rule is not subject to review by OMB. As discussed previously, this direct final rule only regulates DOI employees and consequently does not impose any additional direct costs on the private sector. In addition, DOI does not believe this rulemaking would increase government costs. The direct final rule is also expected to result in stronger public confidence in the integrity of DOI programs and operations.

This direct final rule will not impact the ability of BOEM, BSEE or ONRR to accomplish their missions and will not impact off-shore operators, lessees, contractors, or third parties. It is an internal procedural rule applicable solely to BOEM, BSEE, and ONRR employees and establishes rules for ethical conduct in the performance of official duties that protects their integrity and impartiality.

Administrative Procedures Act – Direct Final Rule

We are publishing this rule as a direct final rule because we view this action as an administrative action that relates solely to certain DOI employees and is non-controversial. This rule will be effective on the date shown in the DATES section unless we receive any significant

adverse comments on or before the deadline for comments set forth in the DATES section. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If we receive any significant adverse comments, we will publish a notice in the Federal Register withdrawing this rule before the effective date. If we receive no significant adverse comments, we will publish a document in the Federal Register confirming the effective date.

Regulatory Flexibility Act

DOI certifies that this direct final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not affect any small entities. It affects only certain DOI employees.

Small Business Regulatory Enforcement Fairness Act

This direct final rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This direct final rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This direct final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The direct final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this direct final rule does not have significant takings implications. The direct final rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this direct final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This direct final rule will not substantially and directly affect the relationship between the Federal and State governments. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This direct final rule complies with the requirements of E.O. 12988. Specifically, this direct final rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this

direct final rule under the Department’s consultation policy and under the criteria in E.O. 13175 and have determined that it has no potential effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

The direct final rule contains no new public reporting or recordkeeping requirements, and an OMB submission under the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, the public is not required to respond.

National Environmental Policy Act

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. DOI analyzed this direct final rule under the criteria of the National Environmental Policy Act and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500-1508) and DOI (43 CFR part 46). This direct final rule meets the criteria set forth in 43 CFR 46.210(i) for a Departmental “Categorical Exclusion” in that this direct final rule is a regulation “of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis....” Further, DOI has analyzed this direct final rule to determine if it meets any of the extraordinary circumstances that will require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.205. DOI has concluded that this direct final rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215(a) through (l).

Data Quality Act

In developing this direct final rule, we did not conduct or use a study, experiment, or survey

requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Nation’s Energy Supply (E.O. 13211)

This direct final rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require the Department to write all rules in plain language. This means that each rule the Department publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that the Department did not meet these requirements, please send comments by one of the methods listed in the **ADDRESSES** section. To better help the Department revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you believe lists or tables would be useful.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can

ask the Department in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you send an email comment directly to the Department without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the Department recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the Department cannot read your comment due to technical difficulties and cannot contact you for clarification, the Department may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

The Department cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

List of Subjects in 5 CFR Part 3501

Conflict of interests, Department components, Gifts, Government employees, Prior approval of outside employment, Speaking and writing, and Teaching .

Dated: _ October 27, 2016 _____

Melinda J. Loftin
Designated Agency Ethics Official, Department of the Interior

Approved: _ October 27, 2016 _____

Walter M. Shaub, Jr.
Director, U.S. Office of Government Ethics

For the reasons stated in the preamble, DOI, with the concurrence of OGE, amends title 5 of CFR part 3501 as follows:

**PART 3501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR
EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR**

1. The authority citation for part 3501 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 30 U.S.C. 1211; 43 U.S.C. 11, 31(a); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.502, 2635.803, 2635.807.

2. In § 3501.102 revise paragraph (a) to read as follows:

§ 3501.102 Designation of separate agency components.

(a) Each of the following eleven components of the Department is designated as an agency separate from each of the other ten listed components and, for employees of that component, as an agency distinct from the remainder of the Department, for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, 5 CFR 2635.807 governing teaching, speaking and writing, and §3501.105 requiring prior approval of outside employment. However, the following eleven components are not deemed to be separate agencies for purposes

of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of the Department:

- (1) Bureau of Indian Affairs, including the Office of Indian Education Programs;
- (2) Bureau of Land Management;
- (3) Bureau of Reclamation;
- (4) Bureau of Ocean Energy Management;
- (5) Bureau of Safety and Environmental Enforcement;
- (6) National Indian Gaming Commission;
- (7) National Park Service;
- (8) Office of Surface Mining Reclamation and Enforcement;
- (9) Office of the Special Trustee for American Indians;
- (10) U.S. Fish and Wildlife Service; and
- (11) U.S. Geological Survey.

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3. In § 3501.103 revise the heading of paragraph (b), and paragraph (b)(1)(i), to read as follows:

§ 3501.103 Prohibited interest in Federal lands.

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*(b) Prohibited financial interests in Federal lands for employees of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue and for the Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS-15 and above. (1) * * **

(i) All employees of the Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resources Revenue; and

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